

**REIMBURSEMENT AGREEMENT CONCERNING
REINVESTMENT ZONE NO. 4, CITY OF SAN MARCOS, TEXAS
AND THE PASO ROBLES PROJECT**

THIS IS A REIMBURSEMENT AGREEMENT (the "Agreement") by and between THE CITY OF SAN MARCOS, TEXAS ("City"), CITY OF SAN MARCOS, TEXAS TAX INCREMENT REINVESTMENT ZONE NO. 4 ("Zone No. 4") and CARMA PASO ROBLES LLC ("Developer"), entered into pursuant to the authority granted to the City by its powers as a home-rule municipality and Chapter 311 of the Texas Tax Code.

WHEREAS, the City is a home rule municipality with an estimated population as of the date of this Agreement of more than 50,000; and

WHEREAS, Developer currently owns that certain 906.5 acre, more or less, parcel of land which was annexed into the City Limits of San Marcos, Hays County, Texas (the "City") on October 5, 2010; and

WHEREAS, Developer also currently owns that certain 432.062 acre, more or less, parcel of land located in the City Limits of the City, and more particularly described together with the 906.5 acre tract in Exhibit "A" (both parcels hereinafter referred to as the "Property"), which exhibit is attached hereto and incorporated herein for all purposes; and

WHEREAS, the City and Developer entered into a Development Agreement dated as of October 5, 2010 (the "Development Agreement") for the proposed Paso Robles Project on the Property; and

WHEREAS, Developer desires to develop the Property in accordance with the Concept Plan (the "Concept Plan") attached to the Development Agreement, as amended from time to time ("Project"); and

WHEREAS, at the request and petition of the Developer presented to the City Council on May 17, 2011, the City is proposing to create "City of San Marcos, Texas Tax Increment Reinvestment Zone No. 4," pursuant to Chapter 311 of the Texas Tax Code; and

WHEREAS, the City has enacted development regulations which govern development of the Property, specifically (i) the City's Land Development Code (the "LDC") in effect on October 30, 2008 (the "Submittal Date"); (ii) the PDD Zoning Regulations for the Property adopted in accordance with the Development Agreement as may be amended from time to time (the "PDD Regulations"), and (iii) construction plans and final plats for portions of the Property that are approved from time to time by the City (the "Approved Plats"), as may be amended by the City from time to time ("Development Regulations"); and

WHEREAS, Developer is proposing to develop the Project on the Property in accordance with the Development Regulations; and

WHEREAS, Developer has requested the City and Zone No. 4 enter into a reimbursement agreement to reimburse the Developer for certain infrastructure costs as a condition to development of the Property; and

WHEREAS, the City and Developer have determined that the reimbursement to the Developer of certain costs incurred in the development of the Property utilizing tax increment revenues realized from designating Zone No. 4 will best be accomplished through a reimbursement agreement; and

WHEREAS, the City and Developer agree that the development requirements of the City and this Agreement substantially advance a legitimate interest of the City; and

WHEREAS, once Zone No. 4 is created by the City, the Board of Directors of Zone No. 4 will also consider approving and executing this Agreement.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the City and Developer hereby agree as follows:

1. **The Project.** Developer is planning and developing a mixed use residential, commercial and retail project, in accordance with the Concept Plan and the PDD Regulations and the construction of the necessary water and wastewater utilities, streets, street lighting and drainage and other related infrastructure to serve such development.

2. **Dedication of Easements for Utilities.** The City and Developer agree to work cooperatively in connection with the dedication of necessary permanent public utility and other easements in a form compliant with City standard terms and policies. Developer agrees to execute these easements within 30 days after receipt of written notice from the City requesting the easement or easements.

3. **Tax Increment Reinvestment Zone.**

a. **Creation.** The City agreed in the Development Agreement to consider creation of Zone No. 4, upon the satisfaction of certain conditions set forth in the Development Agreement, for the purpose of reimbursing the Developer for the costs of certain public infrastructure and improvements to the Property in Zone No. 4 as set forth in Exhibit "B" attached hereto (the "Improvements"). In connection with creation of Zone No. 4, the City will consider approval of an ordinance (the "Ordinance") which will dedicate a certain percentage of increase in value from the base value as of the year of designation of Zone No. 4. Any reference to revenues in this Agreement means only that percentage of incremental value the City designates pursuant to the Ordinance together with any amount agreed to be contributed by Hays County, Texas (the "County") pursuant to the Interlocal Agreement between the City and the County.

b. Time and Amount of Reimbursement. Subject to the conditions stated in this Agreement, the City agrees to reimburse the Developer annually from revenues received through capturing the tax increment from Zone No. 4 as provided in the Ordinance. The City will deduct any third party administrative fees for administering Zone No. 4 prior to remitting payment to the Developer. Revenues received through capturing the tax increment from Zone No. 4 will be remitted to the Developer by June 30th of each year commencing June 30, 2013.

c. Construction of Improvements. The Improvements will be constructed in a good and workable manner and all material used in such construction will be free from defects and fit for their intended purpose. Upon completion of construction, the Developer will provide the City with final record drawings of the Improvements approved by the Project Engineer. Upon completion of construction, the Developer will provide the City with applicable acceptance letters and a certificate of completion from the Project Engineer, certifying that the construction of the Improvements has been completed in accordance with the plans and specifications.

d. Conditions to Reimbursement. The City's obligation to reimburse the Developer for costs incurred for the Improvements from the tax increment captured through Zone No. 4, shall be subject to the following terms and conditions:

(i) The Developer is current on all taxes, fees and obligations to the City/Zone No. 4 and the Developer is not in default in any material respect under the Development Agreement or this Agreement; and

(ii) The Improvements have been constructed through the award of contracts in substantial conformity with the bid procedures applicable to the City and performed in accordance with the applicable standards and rules of the City and County; and

(iii) An audit of costs requested for reimbursement has been prepared by an individual or firm acceptable to the City and the Developer and approved by the City. The form of the audit will be as agreed to between the City and Developer but will be similar in form to that used by water districts in the State to reimburse developers in accordance with the rules of the Texas Commission on Environmental Quality.

At the sole discretion of the City and based upon such terms and conditions as determined, the City may issue bonds in one or more series in an aggregate principal amount not to exceed ~~\$30,000,000~~\$46,000,000 which bonds will be payable solely from the tax increment funds including the tax increment revenues. Any net proceeds of bonds remaining after payment of costs of issuance and any other reserve funds and/or capitalized interest shall be remitted to the Developer within 60 days of delivery of the bonds subject to approval by the City of the reimbursement audit.

4. Cost of Improvements to be Funded by Developer. The Developer shall promptly pay the costs of the Improvements as the same become due, including, without

limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with the Improvements; all payments arising under any contracts entered into for the construction of the Improvements; all costs incurred in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, or sites required as a part of the construction of the Improvements; and all out-of-pocket expenses, including interest costs, incurred in connection with the construction of the Improvements. The City shall not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with, in connection with the construction of the Improvements, but shall only be obligated to reimburse the Developer in the manner and to the extent of revenues provided in Section 3 of this Agreement. After completion of the Improvements and acceptance of the Improvements by the City, the City shall operate and maintain the Improvements at its expense.

5. **Indemnity.** The Developer shall indemnify and hold the City and Zone No. 4 harmless from and against all losses, costs, damages, expenses and liabilities (herein collectively referred to as "Losses") of whatsoever nature, including, but not limited to, attorneys' fees, costs of litigation, court costs, amounts paid in settlement and amounts paid to discharge judgments relating to any claim, lawsuit, cause of action or other legal action or proceeding brought against the City and Zone No. 4, or to which the City and Zone No. 4 may be a party, even if groundless, false or fraudulent, directly, or indirectly resulting from, arising out of or relating to the acquisition, purchase or construction of the Improvements. In the event of any action brought against the City in which indemnification by the Developer is applicable, the City shall promptly give written notice to the Developer, and the Developer shall assume the investigation and defense of such action, including the employment of counsel and the payment of all expenses. The City and Zone No. 4 shall have the right, at their expense, to employ separate counsel and to participate in the investigation and defense of any such action. The Developer shall not be liable for the settlement of any such action made by the City and Zone No. 4 without the consent of the Developer; provided, however, that in the event of any settlement entered into with the consent of the Developer or of any final judgment for a plaintiff in such action, the Developer shall indemnify and hold the City and Zone No. 4 harmless from and against any losses incurred by reason of such settlement or judgment. The expiration of the terms of this Agreement shall not relieve the Developer from any liability hereunder arising prior to the expiration of this Agreement, provided; however, notwithstanding anything to the contrary herein, the Developer's indemnity for each portion of the Improvements accepted by the City for operation and maintenance shall be coterminous with the warranty period for the particular Improvements.

6. **Continuing Securities Disclosure.** To the extent the City elects to issue bonds as provided in Section 3(d), the Developer agrees to provide periodic information and notices of material events regarding the Developer and the development within Zone No. 4 in accordance with the Securities and Exchange Commission Rule 15c2-12. Any notices provided in accordance with this Section 6 shall also be provided to the other parties to this Agreement.

7. **Construction of Improvements.** All improvements will be constructed in a good and workmanlike manner in accordance with the Development Regulations, City Code, and all other applicable regulatory agencies.

8. **Default by Either Party.** In the event of default by either the City or the Developer, the nondefaulting party must give to the defaulting party written notice of such default specifying the failure or default relied upon. If the defaulting party fails to fully cure the default specified in such notice within sixty days after receipt of such notice, or such other period of time as the City and the Developer may mutually agree upon, the nondefaulting party shall have the right to terminate this Agreement in full without liability of any kind to the defaulting party, and to thereafter pursue all other legal or equitable remedies, or, the nondefaulting party shall be entitled to a proper writ issued by a court of competent jurisdiction compelling and requiring the defaulting party to observe and perform the covenants, obligations and conditions described in this Agreement. The nondefaulting party may employ attorneys to pursue its legal rights and if it prevails before any court or agency of competent jurisdiction, the defaulting party shall be obligated to pay all expenses incurred by the nondefaulting party, including reasonable attorneys fees.

9. **Miscellaneous Provisions.**

a. **Actions Performable.** The City and Developer agree that all actions to be performed under this Agreement are performable solely in Hays County, Texas.

b. **Governing Law.** The City and Developer agree that this Agreement has been made under the laws of the State of Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be made under the laws of the State of Texas.

c. **Severability.** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

d. **Complete Agreement.** This Agreement represents a complete agreement of the parties and supersedes all prior written and oral matters related to this agreement. Any amendment to this Agreement must be in writing and signed by all parties.

e. **Exhibits.** All exhibits attached to this Agreement are incorporated by reference and expressly made part of this Agreement as if copied verbatim.

f. **County Approvals.** The City agrees to cooperate with the Developer in seeking necessary approvals from Hays County, Texas in an expedited manner and agrees to exercise its best efforts to assure that the City and County cooperate with each other in coordinating and expediting the approvals required by the Developer.

g. **Notice.** All notices, requests or other communications required or permitted by this Agreement shall be in writing and shall be sent by (i) telecopy, with the original delivered by hand or overnight carrier; (ii) by overnight courier or hand delivery; or (iii)

certified mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

CITY:

City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Attn: Director of Planning
Phone:(512) 393-8000

DEVELOPER:

CARMA PASO ROBLES LLC
~~9737 Great Hills Trail, Suite-~~
~~2609600 N MoPac Expressway,~~
~~Suite 750-~~
Austin, Texas 78759
Attn: ~~Shaun E. Cranston,~~
~~P.Eng.Chad Matheson~~
~~-Phone: (512) 391-1331-1343~~

With copies to:

DuBois Bryant & Campbell LLP
700 Lavaca Avenue, Suite 1300
Austin, Texas 78701
Attn: E. Scott Lineberry
Phone: (512) 381-8016

h. Force Majeure. Developer and the City agree that the obligations of each party shall be subject to force majeure events such as natural calamity, fire or strike.

i. Appointment of Representatives. To further the commitment of the parties to cooperate in the implementation of this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and Developer. The initial representative for the City (the "City Representative") shall be the City Manager, and the initial representative for the Developer shall be Shaun E. Cranston (the "Developer Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property pursuant to the Concept Plan.

j. Assignment. This Agreement may be assigned by the Developer only with the prior written approval of the City, which consent shall not be unreasonably withheld or delayed.

k. Modification. This Agreement shall be subject to change or modification only with the mutual written consent of Developer and the City.

l. Parties at Interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall never be construed to confer any benefit to any third party.

m. Waiver. Each party may specifically, but only in writing, waive any breach of this Agreement by the other party, but no such waiver shall be deemed to constitute a waiver of similar or other breaches by such other party.

10. Term of Agreement. This Agreement shall be in effect from the date of this Agreement until the earlier of (a) thirty (30) years from the date of the approval by the City or (b) the date the Developer is reimbursed for the costs of all of the Improvements as provided in this Agreement.

11. Representation of Authority. The City represents and warrants to the Developer that the City is duly authorized and empowered to enter into this Agreement. The Developer further represents and warrants to the City that it has the requisite authority to enter into this Agreement.

12. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City and Developer, respectively.

[EXECUTION PAGE FOLLOWS]

SIGNED as of this _____ day of - , 2024

CARMA PASO ROBLES LLC,
a Texas Limited Liability Company
By: Brookfield Residential (Texas)
~~Ine~~LLC.,
its sole member

By: _____

Name: _____

Title: _____

CITY OF SAN MARCOS, TEXAS

By: _____
Mayor

ATTEST:

City Clerk

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